

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVE
HARTFORD, CT 06105-3725

██████████ 2018
Signature Confirmation

Client ID # ██████████
Request # 126597

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2018, the Department of Social Services' ("Department"), Community First Choice ("CFC"), sent ██████████ ("Appellant") a notice that her request for a second ramp is being denied as it does not meet the criteria of covered home modifications under the CFC Individual Budget program.

On ██████████, 2018, the Appellant requested an administrative hearing to contest the Department, CFC decision.

On ██████████, 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████, 2018.

On ██████████, 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice rescheduling the administrative hearing for ██████████, 2018.

On ██████████, 2018, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing at ██████████, CT.

The following individuals were present at the hearing:

██████████, Appellant's mother, Guardian
██████████, Appellant's father, Guardian
Paul Ford, Department's Representative, Community First Choice
Miklos Mencseli, Hearing Officer

The Appellant was not present.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department was correct to deny the Appellant's request for a second ramp under the Community First Choice ("CFC") program.

FINDINGS OF FACT

1. The Appellant is receiving Medicaid under the Husky C program. (Hearing Record)
2. The Appellant is currently receiving assistance under the CFC program. (Exhibit 7B: CFC Budget Approval Form)
3. The Appellant is a nineteen year old who is non-functional and wheel chair bound. (Parent's Testimony)
4. The Appellant lives with her parents and brother. (Parent's Testimony)
5. The Appellant is dependent for all her Activity of Daily Living ("ADL") functions. (Parent's Testimony)
6. The Appellant requires 24/7 supervision. (Parent's Testimony)
7. The Appellant has three nurses per week that assist in her care. (Parent's Testimony)
8. The home currently has one ramp for the Appellant's use. (Parent's Testimony)
9. On [REDACTED] 7, 2018, Creative Development, LLC completed an in home assessment regarding a second ramp for the Appellant. (Exhibit 6B: Creative Development report dated [REDACTED]-18)
10. The recommendation for the ramp is to provide the Appellant with another exit from the home in case of emergency or if existing ramp is blocked. (Exhibit 6B)
11. CFC conducted a clinical review of the Appellant's request. (Summary)
12. The review concluded that the request is not linked to an assessed need or goal that would increase the Appellant's independence or substitute for human help or assistance. (Summary, Department's Testimony)

13. A second ramp would allow the Appellant access to the backyard. (Parent's Testimony)
14. The Appellant would be able to join family members for activities in the backyard. Currently the Appellant is in the porch with a nurse when family members are in the backyard. (Parent's Testimony)
15. The second ramp would increase the Appellant's overall access in the home as modifications inside the home is also part of the request for the ramp. (Exhibit 6B, Parent's Testimony)
16. The requested ramp would not increase the Appellant's independence or substitute human help or assistance. (Facts #12 through 14)
17. "The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED], 2018. Therefore, this decision is due not later than [REDACTED], 2018."
18. "However, the hearing, which was originally scheduled for [REDACTED], 2018, was rescheduled for [REDACTED] 2018, at the request of the Appellant, which caused a 20-day delay. Because this 20-day delay resulted from the Appellant's request, this decision is not due until [REDACTED] 2018, and is therefore timely."

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Title 42 of the Code of Federal Regulations (CFR) § 441.510 provides to receive Community First Choice services and supports under this section, an individual must meet the following requirements:
 - (a) Be eligible for medical assistance under the State plan;
 - (b) As determined annually—
 - (1) Be in an eligibility group under the State plan that includes nursing facility services; or
 - (2) If in an eligibility group under the State plan that does not include such nursing facility services, have an income that is at or below 150 percent of the Federal poverty level (FPL). In determining whether the 150 percent of the FPL requirement is met, States must apply the same methodologies as would apply under their Medicaid State plan, including the same income disregards in accordance with section 1902(r)(2) of

the Act.

3. The Appellant is eligible for services under the CFC program.
4. 42 C.F.R. § 441.520 provides for included services.
 - (a) If a State elects to provide Community First Choice, the State must provide all of the following services:
 - (1) Assistance with ADLs, IADLs, and health-related tasks through hands-on assistance, supervision, and/or cueing.
 - (2) Acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish ADLs, IADLs, and health-related tasks.
 - (3) Backup systems or mechanisms to ensure continuity of services and supports, as defined in [§ 441.505](#) of this subpart.
 - (4) Voluntary training on how to select, manage and dismiss attendants.
 - (b) At the State's option, the State may provide permissible services and supports that are linked to an assessed need or goal in the individual's person-centered service plan. Permissible services and supports may include, but are not limited to, the following:
 - (1) Expenditures for transition costs such as rent and utility deposits, first month's rent and utilities, bedding, basic kitchen supplies, and other necessities linked to an assessed need for an individual to transition from a nursing facility, institution for mental diseases, or intermediate care facility for Individuals with Intellectual Disabilities to a home and community-based setting where the individual resides;
 - (2) Expenditures relating to a need identified in an individual's person-centered service plan that increases an individual's independence or substitutes for human assistance, to the extent that expenditures would otherwise be made for the human assistance.
5. 42 C.F.R. § 441.525 provides for excluded services.

Community First Choice may not include the following:

 - (a) Room and board costs for the individual, except for allowable transition services described in § 441.520(b)(1) of this subpart.
 - (b) Special education and related services provided under the Individuals with Disabilities Education Act that are related to education only, and vocational rehabilitation services provided under the Rehabilitation Act of 1973.
 - (c) Assistive devices and assistive technology services, other than those defined in § 441.520(a)(3) of this subpart, or those that meet the requirements at § 441.520(b)(2) of this subpart.
 - (d) Medical supplies and medical equipment, other than those that meet

the requirements at § 441.520(b)(2) of this subpart.

(e) Home modifications, other than those that meet the requirements at § 441.520(b) of this subpart.

6. Section 17b-259b of the Connecticut General Statutes states that "Medically necessary" and "medical necessity" defined. Notice of denial of services. Regulations.
 - (a) For purposes of the administration of the medical assistance programs by the Department of Social Services, "medically necessary" and "medical necessity" mean those health services required to prevent, identify, diagnose, treat, rehabilitate or ameliorate an individual's medical condition, including mental illness, or its effects, in order to attain or maintain the individual's achievable health and independent functioning provided such services are:
 - (1) Consistent with generally-accepted standards of medical practice that are defined as standards that are based on (A) credible scientific evidence published in peer-reviewed medical literature that is generally recognized by the relevant medical community, (B) recommendations of a physician-specialty society, (C) the views of physicians practicing in relevant clinical areas, and (D) any other relevant factors; (2) clinically appropriate in terms of type, frequency, timing, site, extent and duration and considered effective for the individual's illness, injury or disease; (3) not primarily for the convenience of the individual, the individual's health care provider or other health care providers; (4) not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the individual's illness, injury or disease; and (5) based on an assessment of the individual and his or her medical condition.
 - (b) Clinical policies, medical policies, clinical criteria or any other generally accepted clinical practice guidelines used to assist in evaluating the medical necessity of a requested health service shall be used solely as guidelines and shall not be the basis for a final determination of medical necessity.
 - (c) Upon denial of a request for authorization of services based on medical necessity, the individual shall be notified that, upon request, the Department of Social Services shall provide a copy of the specific guideline or criteria, or portion thereof, other than the medical necessity definition provided in subsection (a) of this section, that was considered by the department or an entity acting on behalf of the department in making the determination of medical necessity.

7. Based on the clinical review the Appellant does not meet the criteria to be eligible for the CFC program to provide her with a second ramp. The ramp does not increase the Appellant's independence or substitute the need for assistance in her ADLs.
8. The Appellant does not meet the criteria of "medical necessity" or "medical necessary" as the second ramp for safety or access to the backyard is not medically necessary because it does not attain or maintain the individual's achievable health and independent functioning. CFC is correct in its determination that the Appellant does not meet the medical criteria to be eligible under the State plan for Community First Choice services.

DISCUSSION

The Appellant is dependent with her ADLs. The Appellant cannot function independently. The second ramp would not change her dependence on care providers or family members for assistance.

DECISION

The Appellant's appeal is **DENIED.**



Miklos Mencseli
Hearing Officer

C: Dawn Lambert, DSS – Central Office
Sallie Kolreg, DSS – Central Office
Christine Weston, DSS – Central Office

RIGHT TO REQUEST RECONSIDERATION

The appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within 25 days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Administrative Hearings and Appeals, 55 Farmington Avenue Hartford, CT 06105.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45 day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or the Commissioner's designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.

